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**ATTORNEYS FOR DEBTOR SUPERIOR AIR PARTS, INC.**

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

**IN RE:**

**SUPERIOR AIR PARTS, INC.,**

**Debtor.**

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**Case No. 08-36705**

**Chapter 11**

**DEBTOR'S TRIAL BRIEF  
SUPPLEMENTAL RESPONSE TO OBJECTION TO PLAN  
CONCERNING UNITED STATES REGULATORY MATTER**

TO: THE HONORABLE BARBARA J. HOUSER,  
UNITED STATES BANKRUPTCY JUDGE:

Superior Air Parts, Inc. ("Superior" or "Debtor") files this Trial Brief Regarding the Supplemental Response to Objection to Plan Concerning United States Regulatory Matters and respectfully would show unto this Court as follows:

**I.  
BACKGROUND**

1. APS raised concerns about regulatory approval under 31 C.F.R. Part 800, and section 721(b)(2)(E) of the Defense Production Act of 1950 ("section 721") (50

U.S.C. App. 2170). The Debtor addresses this issue as follows, which contains information provided by Brantly's export and regulatory counsel:

**II.**  
**ISSUE**

2. APS claims "that neither Superior nor Brantly has provided the Voluntary Notice prescribed by" the Treasury Department's Regulations Pertaining to Mergers, Acquisitions, and Takeovers by Foreign Persons (31 C.F.R. Part 800) and "[a]bsent such acceptance, the actions contemplated by the Plan are subject to being reversed under the CFIUS Regulations and should not be confirmed."

3. As discussed below, Brantly's proposed acquisition of Superior does not raise any national security concerns. As a result, APS's claims are without merit and should be rejected.

**III.**  
**OVERVIEW SECTION 721(B)(2)(E) OF THE DEFENSE PRODUCTION ACT OF 1950**  
**("SECTION 721") (50 U.S.C. APP. 2170) OF NATIONAL SECURITY REVIEWS**  
**OF MERGERS AND ACQUISITIONS**

4. The regulations in 31 C.F.R. Part 800 were issued by the Treasury Department to implement (commonly known as the Exon-Florio Amendment), as amended by the Foreign Investment and National Security Act of 2007 ("FINSa"). Section 721 authorizes the President to suspend or prohibit any foreign acquisition, merger or takeover of a U.S. corporation that is determined to threaten the national security of the United States. The President can exercise this authority under section 721 to block a foreign acquisition of a U.S. corporation only if he finds:

A) there is credible evidence that leads the President to believe that the foreign interest exercising control might take action that threatens to impair the national security; and

B) provisions of law, other than this section and the International Emergency Economic Powers Act [50 U.S.C. 1701 et seq.], do not, in the judgment of the President, provide adequate and appropriate authority for the President to protect the national security in the matter before the President.

5. The law provides a number of factors for the President to consider in assessing transactions, including the “potential national security-related effects on United States critical infrastructure, including major energy assets” and “the potential national security-related effects on United States critical technologies.”

6. While the “national security” is not specifically defined, the law states that that term shall be construed to include those issues relating to “homeland security,” including its application to “critical infrastructure.” The term “critical infrastructure” is defined as “systems and assets, whether physical or virtual, so vital to the United States that the incapacity or destruction of such systems or assets would have a debilitating impact on national security.” The term “critical technologies” is defined as “critical technology, critical components, or critical technology items essential to national defense.”

7. To assist the President in making these national security determinations, 50 U.S.C. App. 2170 provides for the Committee on Foreign Investment in the United States (CFIUS), an inter-agency group chaired by the Treasury Department, to notices submitted by parties to a transaction to determine whether the transaction “threatens to impair the national security of the United States” or the transaction would result “in control of any critical infrastructure of or within the United States by or on behalf of any foreign person” that “could impair national security.” The CFIUS notice is a voluntary process, allowing parties to a transaction to decide whether to initiate a CFIUS review

by filing a voluntary notice under section 721. This distinguishes the CFIUS process from investment screening used in some countries, where all transactions that meet specified value thresholds or other criteria are subject to mandatory review by government agencies.

8. Guidelines recently issued by the Treasury Department confirm that in deciding whether to submit a voluntary notice of a transaction to CFIUS, “parties to a transaction may wish to consider whether their transaction could present national security considerations, since CFIUS focuses solely on national security.” See 73 Fed. Reg. 74,567 (Dec. 8, 2008).

#### **IV. ANALYSIS OF BRANTLY ACQUISITION OF SUPERIOR**

9. Brantly’s acquisition of Superior does not raise any national security concerns that merit a CFIUS notification or review. In addition, this acquisition is not consistent with previous transactions that CFIUS has reviewed in the past and raised national security considerations.

10. Superior produces parts and components for Lycoming and Continental piston engines and several types of commercial piston engines. These types of engines have been around for many years, are not considered to be advanced technology, can be used in any type of aircraft, and were not designed or intended for military use. In addition, Superior does not hold any government contracts and has not sold its products to the military.

11. Under U.S. export control laws Superior’s products and technology are subject to the Export Administration Regulations (EAR), which covers dual-use and

commercial products and related technology, and not the International Traffic in Arms Regulations (ITAR) which covers defense articles and related technology.

12. Indeed, piston engines and related parts and components are classified on the Commerce Control List (“CCL”) as Export Classification Control Number (“ECCN”) 9A991.d. The technology for the development, production or use of equipment controlled by 9A991 is classified as 9E991. The reason for control of items and technology controlled under ECCNs 9A991.d and 9E991 is Anti-Terrorism. As a result, items classified as ECCN 9A991.d and technology classified as 9E991 may not be exported or reexported to Cuba, Iran, North Korea, Sudan and Syria without a license. However, there are no export license requirements or other restrictions to export items classified as ECCN 9A991.d and technology classified as 9E991 from the U.S. to China.

13. Finally, Superior does not produce any classified products and does not have access to any classified information.

14. Brantly’s proposed acquisition of Superior does not raise any of the national security considerations contemplated by 50 U.S.C. App. 2170. As a result, this transaction is not the type of transaction that is subject to reviewed or investigation by CFIUS.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the above and foregoing document was served upon the parties listed below via email and on the attached service list via First Class U.S. Mail, postage prepaid on August 26, 2009.

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